ANNEXURE A

# THE MYSORE OWNERSHIP PLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) BILL, 1972.

(L.A. BILL No. 30 OF 1972)

A Bill to regulation in the State of Mysore the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis.

Whereas, it is expedient to make provision for the regulation of the promotion of the construction, sale and management and transfer, of flats taken on ownership basis in the State of Mysore;

Be it enacted by the Mysore State Legislature in the Twenty-third Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Mysore Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972.

(2) It extends to the whole of the State of Mysore.

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

2. *Definition.*—In this Act, unless the context otherwise requires—

(*a*) 'flat' means a separate and self-contained set of premises used or intended to be used for residence or office or show-room or shop or godown (and includes a garage), the premises forming part of a building;

*Explanation.*—Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained;

(*b*) 'prescribed' means prescribed by rules made under this Act;

(*c*) 'promoter' means a person who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling or all of them to other persons, or to a company, co-operative society or other association of persons and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;

(*d*) 'Registrar' means the Registrar as defined in the Mysore Co-operative Societies Act, 1959 or, as the case may be, in the Companies Act, 1956;

(*e*) 'to construct a block or building of flats' includes to convert building or part thereof into flats.

3. *General Liabilities of Promoter.*—(1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce or cause to be given or produced the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall,—

(*a*) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Advocate of not less than seven years standing;

(*b*) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(*c*) allow inspection on reasonable notice of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;

(*d*) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;

(*e*) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building and if the promoter is not himself the builder disclose, on such notice, or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with architects and contractors regarding hte design, materials and construction of the building;

(*f*) specify in writing the date by which possession of the flat is to be handed over;

(*g*) prepare and maintain a list of flats with their numbers already taken or agreed to be taken and the names and addresses of the parties and the price charged or agreed to be charged therefor and the terms and conditions if any on which the flats are taken or agreed to be taken;

(*h*) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats;

(*i*) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given to the local authority;

(*j*) make a full and true disclosure of all outgoings (including, ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);

(*k*) make a full and true disclosure of such other information and documents in such manner as may be prescribed and give or demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charges therefor.

4. *Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.*—Notwithstanding anything contained in any other law a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than twenty per cent of the sale price, enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908 and such agreement shall contain the prescribed particulars; and to such agreement there shall be attached, such documents or copies thereof, in respect of such matters, as may be prescribed.

5. *Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given.*—The promoter shall maintain a separate account in any bank of sums taken by him, from persons intending to take or who have taken flats, as advance or deposit, including any sums so taken towards the share capital for the formation of a co-operative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes, and shall on demand in writing by an officer appointed by a general or special order by the State Government for the purpose, make full and true disclosure of all transactions in respect of that account.

6. *Responsibility for payment of outgoing till property is transferred.*—A promoter shall, while he is in possession and where he collects from persnos who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoing (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity-charges, revenue assessment, interest on any mortgage or other encumbrances, if any), until he transfers the property to the persons, taking over the flats, or to the organisation of any such persons.

7. *After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified.*—(1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agres to take one or more flats, the promoter shall not make—

(i) any altrations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person; or

(ii) any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.

(2) Subject to the provisions of sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid.

(3) If any defect in the building or material used, or if any unauthorised changing in the construction is brought to the notice of the promoter within a period of one year from the date of handing over possession, it shall wherever possible, be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change.

(4) *Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction or as to whether it is reasonably possible for the promoter to rectify any such defect or change or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not, rectified by the promoter the matter shall, on payment of such fee as may be prescribed, be referred for decision to such officer not lower in rank than a Superintending Engineer as the State Government may by general or special order specify in this behalf, within a period of two years from the date of handing over possession. Such officer shall after such inquiry as he deems necessary, record his decision, which shall be final.*

8. *Refund of amount paid with interest for failure to give possession within specified time or further time allowed.*

(*a*) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or

(*b*) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist, then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at *nine per cent per annum* from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed to the extent of the amount due, but subject to any prior encumbrances.

9. *No mortgage etc., to be created without consent of parties after execution of agreement for sale.*—No promoter shall, after he executes an agreement to sell any flat, mortgage or create a charge on the flat or the land, without the previous consent in writing of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the right and interest of such persons.

10. *Promoter to take steps for formation of co-operative society or company.*—(1) As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society, or as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be of a company.

(2) Nothing in sub-section (1) shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

11. *Promoter to convey title, etc., and execute documents, according to agreement.*—A promoter shal take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat-takers his right, title and interest in the land and building and execute all relevant documents therefore in accordance with the agreement

executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

12. *General liabilities of a person who takes a flat.*—(1) Every person who has executed an agreement to take a flat shall pay at the proper time and place the price, the municipal taxes, water and electricity charges, ground rent (if any), and other public charges payable in respect of the flat taken by him and where a co-operative society or a company of persons taking the flats is to be constituted, co-operate in the formation of such society or company, as the case may be.

(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to one thousand rupees.

13. *Manager not to cut off, with-hold, curtail or reduce essential supply or service.*—(1) No person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats, whether as member of a managing committee, Director, Secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, with-hold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him.

(2) The person who has taken or agreed to take the flat or the occupier may, if the manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.

(3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service, and that it was cut off or with-held or curtailed or reduced by the manager without just and sufficient cause, the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order.

(4) The Manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.

(5) Notwithstanding anything contained in any law for the time being in force,—

(*a*) in any area for which a Court of Small Causes is established under the Mysore Small Cause Courts Act, 1964, that Court, and

(*b*) elsewhere, the Court of the Civil Judge, shall have jurisdiction to decide any application made under sub-section (2), and no other court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application.

(6) The District Court may, for the purpose of satisfying itself that the order made on an application made under sub-section (2) was according to law, call for the case in which such order was made and pass such order with respect thereto as it thinks fit.

(7) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.

(8) An offence under sub-section (7) shall be a cognizable offence.

*Explanation I.*—In this section, essential supply or service includes the supply of water, electricity lights in passage, and on stair cases, lifts and conservancy or sanitary service.

*Explanation II.*—For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority.

14. *Offences by promoter.*—Any promoter who, without reasonable excuse, fails to comply with or contravenes any provisions of this Act or of any rule made thereunder shall (where no other penalty is expressly provided for) on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both; and a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to four years, or with fine, or with both.

15. *Offences by Companies.*—(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business by the company, as well

as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due deligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act, has been committedwith the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purpose of this section—

(*a*) 'company' means a body corporate and includes a firm or other association of individuals ; and

(*b*) 'director' in relation to a firm means a partner in the firm.

16. *Power to make rules.*—(1) The State Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure to be made and the documents of which true copies shall be given by the promoter ;

(*b*) the particulars to be contained in the agreement for sale and the documents or copies thereof to be attached to such agreement ;

(*c*) the period within which the promoter shall submit an application for registration of a co-operative society or a company ;

(*d*) the period within which the promoter shall execute the conveyance ;

(*e*) any other matter which has to be, or may be, prescribed under this Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may

be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall from the date on which the modification or anulment is notified by the State Government in the official Gazette have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. *Act to be in addition to Transfer of Property Act and to over-ride contract to the contrary.*—The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect notwithstanding anything to the contrary contained in any contract.

18. *Act not to apply to the State Government, Housing Board, etc.*—Nothing contained in this Act shall apply to the State Government or to the Mysore Housing Board constituted under the Mysore Housing Board Act, 1962 (Mysore Act 10 of 1963) or to the Board of Trustees for the Improvement of the City of Mysore constituted under the City of Mysore Improvement Act, 1903 (Mysore Act 3 of 1903) or to the Board of Trustees for the Improvement of the City of Bangalore constituted under the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945).

## STATEMENT OF OBJECTS AND REASONS

Separate law is being made to declare that flats or apartments in multistoreyed building may, for all purposes, be heritable and transferable immovable property. Owners of such flats or apartments enjoy exclusive ownership of their flats or apartments while retaining an undivided interest in the common areas and facilities which are to be used and owned by all such owners jointly.

An enterprising individual or group of individuals may either construct out of his or their own funds multistoreyed buildings consisting of a number of self contained flats or apartments and sell them to individuals on ownership basis, or construct such buildings after collecting contributions from intending purchasers of such flats or apartments.

In the interest of the intending purchasers who advance funds it is necessary to regulate the construction, sale, management and transfer of flats or apartments by individuals or group of individuals who construct such multistoreyed buildings.

Hence the Bill.

## FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for reference of certain disputes between the promoter and the flat taker to an officer to be appointed by the Government. If the number of disputes referred to are many it may become necessary to appoint some staff which may involve some recurring expenditure from the Consolidated Fund of the State. It is not possible to assess the probable expenditure as it depends upon the number of disputes raised. If very few disputes are raised appointment of new staff may not be necessary and there would be no extra expenditure.

## MEMORANDUM REGARDING DELEGAETED LEGISLATION

*Cause* 3.—In sub-clause (2) of clause 3,—

(1) item (e) empowers the State Government to prescribed by rules the particulars as respects the design and materials to be used in the construction of the building by the promoter if he himself is the builder.

(2) item (k) empowers the State Government to prescribed by rules, the information on and documents in respect of which the promoter shall make a full and true disclosure, the manner in which he shall make such disclosure and the documents copies of which shall be given by the promoter.

*Clause* 4.—This clause empowers the State Government to prescribe by rules the particulars which the agreement to be registered by the promoter shall contain and the matter in respect of which documents, or copies thereof shall be attached to such agreement.

*Clause* 7.—Sub-clause (4) of clause 7, empowers the State Government to prescribe by rules the fee for referring the dispute regarding any defect in building or material used, or any unauthorised change in the construction or as to whether it is reasonably possible for the promoter to rectify ay such defect, etc., to an officer not lower in rank than a Superintending Engineer as the State Government may by general or special order specify in this behalf.

*Clause* 10.—This clause empowers the State Government to prescribe by rules the period within which the promoter shall submit an application for registration of a co-operative society or a company.

*Clause* 11.—This clause empowers the State Government to prescribe by rules the period within which the conveyance in accordance with the agreement under section 4 shall be executed.

*Clause* 16.—This clause empowers the State Government to make rules subject to the condition of previous publications to carry out the purpose of the Act.

The delegation of the proposed legislative power is of a normal character.

B. BASAVALINGAPPA.

TE. HANUMANTHAPPA,
*Secretary.*

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